

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GERRY B. LONG,)	
)	No. CV-09-0030-JPH
Plaintiff,)	
)	ORDER GRANTING DEFENDANT'S
v.)	MOTION TO DISMISS
)	
MICHAEL J. ASTRUE, Commissioner)	(Ct. Rec. 7.)
of Social Security,)	
)	
Defendant.)	
)	
)	

On February 3, 2009 plaintiff filed a complaint. (Ct. Rec. 1.) The parties have consented to proceed before a magistrate judge. (Ct. Rec. 6.) On March 12, 2009, defendant moved to dismiss for lack of jurisdiction. (Ct. Rec. 7.) On March 31, 2009, plaintiff filed a response. (Ct. Rec. 13.)

Plaintiff's initial application for benefits apparently was denied on January 10, 2007, and her request for reconsideration denied on May 8, 2007. (Ct. Rec. 8 at 2.) Defendant points out that the notice of reconsideration stated plaintiff had no more than 60 days from the date of receipt to request a hearing before an ALJ, meaning shortly after July 8, 2007, depending on the exact date of receipt. (Id.) Plaintiff filed her request for hearing on July 21, 2008 - more than a year late. (Ct. Rec. 8 at 3.) On September 30, 2008, an ALJ found good cause for the late filed request had not been established as defined by 20 C.F.R. § 404.911

1 and plaintiff's request for hearing was dismissed. (Ct. Rec. 8 at
2 3.)

3 The court is persuaded that the statutory scheme expressly
4 allows judicial review only of a "final decision," and that has
5 not been presented to the court to review. See 42 U.S.C. § 405(g);
6 *Matlock v. Sullivan*, 908 F.2d 492, 494 (9th Cir. 1990)
7 (Commissioner's ruling denying additional time to file a request
8 for hearing is not subject to judicial review).

9 After reviewing the record and the briefing by the parties,
10 the court **GRANTS** defendant's motion to dismiss (Ct. Rec. 7). As
11 noted in plaintiff's response (Ct. Rec. 13), she may file a new
12 claim.

13 Accordingly,

14 **IT IS ORDERED** that the motion (Ct. Rec. 7) is **granted**.

15 DATED this 1st day of April, 2009.

16 s/ James P. Hutton
17 JAMES P. HUTTON
18 UNITED STATES MAGISTRATE JUDGE
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